COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

APPEAL DECISION SUMMARY

APPEAL No: 2011-1944

DATE: October 13, 2011

AGENCY: DSS

OUTCOME: (check one)

_____SUSTAINED ____REVERSED X_REMANDED
_____INVALID/FULL
_____SUSTAINED and REMANDED
_____REVERSED and REMANDED
_____AGENCY ERROR/OTHER

ISSUE ON APPEAL: Eligibility-Aged, Blind, & Disabled-Resources

GENERAL RULE OF LAW: Medicaid Resource Limits

1. 42 U.S.C. § 1396a(a)(17)(B) requires a state plan for medical assistance to include:

    i. reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are . . . available to the applicant or recipient.

2. In order to be eligible for Medicaid, in addition to meeting non-financial requirements, an individual must meet all the requirements of a Medicaid covered group. There are two classifications of covered groups, the categorically needy (CN) and the medically needy (MN). The CN classification is divided into subclassifications of categorically needy, categorically needy non-money payment (CNNMP) and medically indigent (MI). Within some covered groups are several definitions of eligible individuals. The agency must verify that an individual meets a definition and a covered group's requirements in order for that individual to be eligible for Medicaid. Medicaid Manual, Volume XIII, M0310.001, A (p. 1).

3. There are non-financial and financial eligibility requirements that must be met before an individual can be determined eligible for Medicaid. The financial eligibility requirements include an evaluation of asset transfers, resources and income. Asset transfers may affect

eligibility for institutionalized individuals. Resources and income must be within the resource and income limits appropriate to the individual's covered group. Medicaid Manual, Volume XIII, M0210.001, B, 1 & 2 (p. 1).

4. A renewal of the enrollee's eligibility must be completed at least once every 12 months. An individual's continued eligibility for Medicaid requires verification of income for all covered groups and resources for covered groups with resource requirements. Medicaid Manual, Volume XIII, M1520.200, A (p. 4).

5. Following a determination that eligibility no longer exists or that the enrollee's Medicaid services must be reduced, the Advance Notice of Proposed Action must be sent to the enrollee at least 10 days plus one day for mail, before action is taken to cancel or reduce Medicaid coverage. Medicaid Manual, Volume XIII, M1520.401, A (p. 8).

6. As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income. Medicaid Manual, Volume XIII, M1110.001, A (p. 1).

7. Resources are cash and any other personal or real property that an individual (or spouse, if any) owns; has the right, authority, or power to convert to cash (if not already cash); and is not legally restricted from using for his/her support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B, 1 (p. 3).

8. Resource limit is the maximum dollar amount of countable assets an individual, couple, or family may own and still meet the established criteria for Medical Assistance in an ABD category. These amounts are established by law. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, A (p. 2); Medicaid Manual, Volume XIII, M1110.003, B, 1 (p. 2).
9. The income and resource limits are established in relation to the number of persons in the assistance unit. The number of persons in the assistance unit and the individual's covered group classification determine which resource and income limits apply. Medicaid Manual, Volume XIII, M0510.001, A (p. 1)

10. The resource limit for one person in the CN, CNNMP, and MN covered groups is $2,000. The resource limit for one person in the ABD with income $\leq$ 80% Federal Poverty Limit (FPL) covered group is $2,000. The resource limit for one person in the QMB, SLMB, and QI covered groups is $6,680. Medicaid Manual, Volume XIII, M1110.003, B, 2 (p. 2).

11. Make all resource determinations per calendar month. Resource eligibility exists for the full month if countable resources were at or below the resource standard for any part of the month. Medicaid Manual, Volume XIII, M1110.600, A (p. 18).

12. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.200, H (p. 8).

13. Title XIX, Section 1924 of the Social Security Act contains special eligibility rules that apply ONLY to married institutionalized individuals whose first continuous period of institutionalization began on or after September 30, 1989. These rules are intended to prevent the impoverishment of a spouse living in the community when the other enters long-term care. For resource assessment and eligibility determination, the resource value is its value as of the first moment of the first day of a calendar month. Medicaid Manual, Volume XIII, M1480.000, A (p. 1).

14. Title XIX, Section 1924 of the Social Security Act supersedes all other sections of Medicaid law when determining countable resources and income of a married institutionalized individual who has a community spouse. Therefore, the usual Medicaid eligibility rules do not apply to an institutionalized individual with a community spouse whenever the usual Medicaid rules conflict with the law in this section. Medicaid Manual, Volume XIII, M1480.000, A (p. 1).

15. An institutionalized spouse is an individual who is in a medical institution, who is receiving Medicaid waiver services or who has elected hospice services, and who is married to a spouse who is not in a medical institution or nursing facility. The term "community spouse" means the spouse of an institutionalized spouse who is not an inpatient in a medical institution or nursing facility. The community spouse can be living outside an institution or in a residential institution such as an adult care residence. A spouse living in the couple's home who is also receiving Medicaid Community-Based Care (CBC) waiver services is a community spouse. An institutionalized spouse receiving Medicaid CBC Waiver services can also be a community spouse if his spouse is in a medical facility or is receiving Medicaid CBC Waiver services. Medicaid Manual, Volume XIII, M1480.000, A (p. 1); M1480.010, B, 2 (p. 2): M1480.010, B, 15 (p. 5).

16. A resource assessment is strictly a compilation of a couple's reported resources that exist(ed) at the first moment of the first day of the month in which the first continuous period of institutionalization began on or after September 30, 1989. Calculation of the couple's total countable resources at that point, and calculation of the spousal share of those total countable resources is required. A resource assessment does not determine resource eligibility, but determines the spousal share of the couple's combined countable resources. The spousal share is used in the calculation of the spousal protected resource amount (PRA) and the institutionalized spouse's countable resources. Medicaid Manual, Volume XIII, M1480.200, A (p. 8a); M1480.220, E (p. 14).

17. A resource assessment must be completed when a married institutionalized individual with a community spouse who is in a nursing facility, or is screened and approved to receive nursing facility or Medicaid CBC waiver services, or has elected hospice services, applies for Medicaid. The resource assessment is completed when the applicant is screened and approved to receive nursing facility or Medicaid CBC services or within the month of application for Medicaid, whichever is later. Medicaid Manual, Volume XIII, M1480.200, B, 3, b (pp. 8a-8b);

18. When both spouses request Medicaid CBC, one resource assessment is completed. The $2,000 Medicaid resource limit applies to each spouse. Medicaid Manual, Volume XIII, M1480.200, B, 3, c (p. 8b).

19. Resources owned in the name of one or both spouses are considered available in the initial month for which eligibility is being determined regardless of whether either spouse agrees to sell or liquidate the resource, and regardless of whether either spouse refuses to make the resource available. Once an institutionalized spouse has established Medicaid eligibility as an institutionalized spouse, count only the institutionalized spouse's resources when determining the institutionalized spouse's Medicaid eligibility. Do not count or deem the community spouse's resources available to the institutionalized spouse. Medicaid Manual, Volume XIII, M1480.230, B, 1 & 2 (pp. 18b-18c).

20. A life insurance policy owned by the individual is a resource if it generates a cash surrender value (CSV). Its value as a resource is the amount of the CSV. Medicaid Manual, Volume XIII, M1130.300, B, 1 (p. 20).

21. Face value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. A life insurance policy is an excluded resource, for individuals age 21 and over, if it's FV and the FV of any other life insurance policies the individual owns on the same insured total $1,500 or less. Burial insurance policies and term insurance policies that do not generate a CSV are not taken into account. Medicaid Manual, Volume XIII, M1130.300, A, 2 (p. 18); M1130.300, B, 2, 3 (p. 20).

22. The maximum of $3,500 can be excluded from countable resources if the funds are set aside for:
    - the burial expenses of the individual; and
    - the burial expenses of the individual's spouse

    Medicaid Manual, Volume XIII, S1130.410, C, 1 (p. 28).

23. Burial funds are resources that have been specifically set aside and clearly designated in writing for the cremation or other burial-related expenses of the individual or the individual's spouse. Burial funds include cash, financial accounts, or other financial instruments with a definite cash value, such as life insurance policies. Medicaid Manual, Volume XIII, S1130.410, B, 1 (p. 27).

24. Burial funds may be designated by the applicant at the time of application or during the initial application processing period or by an enrollee at any time after eligibility has been determined. Burial funds may be designated by an indication on the burial fund document (e.g., the title on a bank account); or a signed statement. Medicaid Manual, Volume XIII, M1130.410, D, 1 (p. 31).

25. The countable value of a bank account is the lower of the balance before income is added, or the ending balance minus any income added during the month. Funds cannot be both income and a resource in the same month. Income that has been added to a bank account during the month must be subtracted from the ending balance to ensure that the

income is not also counted as a resource. Medicaid Manual, Volume XIII, M1110.600, B, 3 (p. 18); M1140.200, B, 5 (p. 18).

AGENCY DECISION: The Hearing Officer remanded the case to the agency for further evaluation based upon the following:

The DSS did not complete a resource assessment, which was required when the Appellant, who was an institutionalized spouse with a community spouse, applied for Medicaid. Because the resource assessment was not completed, the DSS failed to properly evaluate the Appellant's countable resources and incorrectly terminated the Appellant's LTC Medicaid coverage; therefore, further evaluation by the DSS was necessary.

APPLICABLE LAW/REGULATIONS/POLICY

United States Code

42 U.S.C. §1396a (a) (17) (B)

Medicaid Manual, Volume XIII

M0130.200, H (p. 8)
M0210.001, B, 1 & 2 (p. 1)
M0310.001, A (p. 1)
M0310.002, B, 1 (p. 2)
M0510.001, A (p. 1)
M1110.003, A (p. 2)
M1110.003, B, 1 & 2 (p. 2)
S1110.100, B, 1 (p. 3)
M1110.600, A (p. 18)
M1110.600, B, 3 (p. 18)
M1130.300, A, 2 (p. 18)
M1130.300, B, 1-3 (p. 20)
S1130.410, B, 1 (p. 27)
S1130.410, D, 1 (p. 31)
S1130.410, C, 1 (p. 28)
M1140.200, B, 5 (p. 18)
M1480.000, A (p.1)
M1480.010, B, 2 (p. 2)
M1480.200, A (p. 8a)
M1480.200, B, 3, b (pp. 8a-8b)
M1480.200, B, 3, c (p. 8b)
M1480.220, E (p. 14)
M1480.230, B, 1 & 2 (pp. 18b-18c)
M1520.401, A (p. 8)